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UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF NEVADA

JANET SOBEL, DANIEL DUGAN, PhD.,
and LYDIA LEE, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

THE HERTZ CORPORATION, et al.,

Defendants.

Case No.: 3:06-cv-00545 LRH-RAM

**MOTION AND MEMORANDUM IN
SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF PROPOSED
NOTICE, PLAN FOR DISTRIBUTION
OF NOTICE, AND SETTING OF
HEARING DATE FOR APPLICATION
FOR ATTORNEYS' FEES AND COSTS**

Plaintiffs seek entry of the attached Proposed Order (Exhibit "A") to implement the Court's ruling that all Class Members in this Action are entitled to receive the full amount of Concession Recovery Fees that they paid, plus interest. The first step in this process is providing notice, and an opportunity to opt out, to all Class Members ("Notice"). Fed. R. Civ. P. 23(c)(2)(b). Plaintiffs contemplate that after completion of Notice, the Court will be able to enter judgment on its Order granting summary judgment in favor of all Class Members who do not opt out, consistent with Fed. R. Civ. P. 58(a), 58(b)(2), and 23(c)(3)(B). Rule 23(c)(3)(B) mandates that any judgment in a Class Action must "include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members." Because no Notice has yet been sent to the Class, such a judgment cannot be entered at this time.

MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF
PROPOSED NOTICE, PLAN FOR DISTRIBUTION OF NOTICE, AND SETTING OF HEARING DATE FOR
APPLICATION FOR ATTORNEYS' FEES AND COSTS

1 The Proposed Notice is attached to the Proposed Order as Exhibit A. It provides in
 2 “plain, easily understood language,” all of the information required by Fed. R. Civ. P.
 3 23(c)(2)(b):

- 4 (i) the nature of the action;
- 5 (ii) the definition of the class certified;
- 6 (iii) the class claims, issues, or defenses;
- 7 (iv) that a class member may enter an appearance through an attorney if the
 8 member so desires;
- 9 (v) that the court will exclude from the class any member who requests
 10 exclusion;
- 11 (vi) the time and manner for requesting exclusion; and
- 12 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

13 The Proposed Notice also provides the information concerning a hearing on attorneys'
 14 fees and costs required by Fed. R. Civ. P. 23(h)(1).

15 Plaintiffs seek to provide Notice by two means: First, Notice shall be provided by e-mail
 16 where possible, and by surface mail where it is not, to all putative Class Members whose names
 17 and addresses appear in Hertz’s records. This procedure will use the database that was used for
 18 the Notice to the Class of the 2011 Proposed Settlement. Secondly, Hertz will be required to
 19 post a Summary Notice at its United States airport locations, to attempt to reach individuals who
 20 no longer can be reached at their last-known addresses. In addition, the Notice and Summary
 21 Notice will direct Class Members to a website that provides additional information about the
 22 case, including counsel’s fee and cost application and a form for updating mailing addresses.
 23 Plaintiffs believe that this process represents the “best notice that is practicable under the
 24 circumstances.” Fed. R. Civ. P. 23(c)(2)(B). The Court accepted a similar Notice Procedure in
 25 its previous Order preliminarily approving the proposed settlement. The proposed contents of
 26 the two forms of Notice are attached to the Proposed Order as Exhibits “A” and “B”.

27 Plaintiffs request that the Court require Hertz to pay the cost of Notice. The Ninth
 28 Circuit has held that a district court may order that a defendant pay the costs of notice to a class

in situations where the court has found defendants to be liable. *Hunt v. Imperial Merchant Svcs., Inc.*, 560 F.3d 1137, 1143-44 (9th Cir. 2009), citing *Macarz v. Transworld Sys., Inc.*, 201 F.R.D. 54, 58 (D. Conn. 2001); *Six Mexican Workers v. Ariz. Citrus Growers*, 641 F. Supp. 249, 264 (D. Ariz. 1986); *Catlete v. Missouri Highway and Transportation Comm.*, 589 F. Supp. 949 (W.D. Mo. 1984). See also *Bickel v. Whitley County Sheriff*, 2010 WL 5564634 (N.D. Ind. 2010); *Hook v. Baker*, 2004 WL 3113717 (S.D. Ohio 2004). The case for requiring defendants to pay these costs is especially strong here for two reasons: First, this Court has already ruled against Defendants on damages as well as liability; and second, Nevada law mandates that costs in this case be awarded to the prevailing party. See N.R.S. § 482.31585.

Because of the high expense of Notice to approximately 1.2 million Class Members, Plaintiffs would like to send out Notice only once, and, accordingly, request that this Notice also provide the notification to the Class that Plaintiffs' Counsel intend to apply for a fee award in this case, as well as reimbursement of costs to attorneys and incentive awards to Lead Plaintiffs. The proposed schedule contemplates that the briefs on attorneys' fees will be filed by the time of distribution of Notice, and can be available to all Class Members by website. *In re Mercury Interactive Corp. Securities Litig.*, 618 F.3d 988, 993-94 (2010) (schedule must allow time for Class Members to review fee application before objection deadline).

The proposed schedule allows sufficient time to permit both defendant Hertz and any interested Class Members to comment on the award prior to a hearing, as required by Fed. R. Civ. P. 23(h):

Publication of Notice to the Class	90 days from entry of Order
Fee Application Deadline	90 days from entry of Order
Deadline for Opting Out of Class and Objecting to Fee Application	45 days from Notice Date
Submission of List of Opt-outs and Proposed Form of Rule 58(d) Order Entering Summary Judgment Ruling	15 days from Opt-out Deadline
Plaintiffs' Reply to any Objections to Fee Application	15 days from Objection Deadline
Attorney Fee Hearing	7 or more days following date of reply brief

MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF PROPOSED NOTICE, PLAN FOR DISTRIBUTION OF NOTICE, AND SETTING OF HEARING DATE FOR APPLICATION FOR ATTORNEYS' FEES AND COSTS

1 Plaintiffs respectfully suggest that the Court adopt a schedule similar to this to allow
2 adequate time for counsel to prepare and publish Notice, and to allow Class Members to opt out,
3 consistent with the requirements of due process. *Torrise v. Tucson Electric Power*, 8 F.3d 1370,
4 1374-074 (9th Cir. 1993) (notice mailed 31 days before objection deadline, and 45 days before
5 hearing provided adequate time for Class Members to evaluate).

6 Dated: April 15, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b) and Local Rule 5-4, I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on April 15, 2013, I electronically filed this MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF PROPOSED NOTICE, PLAN FOR DISTRIBUTION OF NOTICE, AND SETTING OF HEARING DATE FOR APPLICATION FOR ATTORNEYS' FEES AND COSTS and thus, pursuant to LR 5-4, caused same to be served by electronic mail on the following Filing Users:

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Dated this 15th day of April, 2013.

/s/ Teresa W. Stovak
An Employee of Robertson, Johnson,
Miller & Williamson